REPORT

OF THE

ATTORNEY-GENERAL

OF THE

STATE OF FLORIDA,

FOR THE PERIOD

Beginning March 20, 1895, and Ending
March 20, 1897.

TALLAHASSEE, FLA.,
FLORIDIAN PRINTING COMPANY,
1897.

REPORT OF ATTORNEY-GENERAL.

ATTORNEY-GENERAL'S OFFICE,
TALLAHASSEE, FLA., March 20, 1897.

To His Excellency, WILLIAM D. BLOXHAM, Governor of Florida:

In obedience to the requirements of the Constitution of this State, I have the honor to submit the following report of the matters pertaining to the office of Attorney-General for the two years last past:

THE F. C. & P. R. R. TAX CASE.

In my biennial report of March 20, 1895, I stated the history of this suit up to that time. On the 19th day of March, 1895, by a unanimous opinion, the Supreme Court of Florida held that the F. C. & P. R. R. Co. were liable for the sum of $96,181.69, for back taxes assessed against the property for the years 1879, 1880 and 1881. The decision of the court covered every point raised by the railroad company, and it was natural to suppose that litigation in the courts of this State was ended. But on application of John A. Henderson, Esq., the court in the Third Judicial Circuit made the following order: "That the said complainant has leave to file its supplemental bill in the nature of a bill of review in the above entitled cause." This order was made on the 9th day of November, 1895. On the 12th day of the same month the railroad company filed its supplemental bill in the nature of a bill of review.

The case made by this last bill in behalf of the railroad company is wholly at variance with the case made in the company's original bill filed in 1892, to enjoin the collection by the State of the back taxes spoken of above. The object of this second bill is like the object of the first, to defeat the collection of the taxes due the State.

A demurrer was interposed in behalf of the State to this supplemental bill on the 3d day of January, 1896. The demurrer was overruled by the court. An appeal was taken on

behalf of the State to the June term of the Supreme Court, 1896. The Supreme Court rendered its decision in the case on the 17th day of March, 1897. It reversed the decree of the court below, overruling the demurrer. And the opinion of the majority of the court concludes in the following language:

"The decree overruling the demurrer will be reversed, and the cause remanded with further directions that the Circuit Court dismiss the supplemental bill in the nature of a bill of review, and enter a final decree in accordance with the former judgment of this Court, upon which a mandate will again issue, and an order will be entered here permitting appellee, within ninety days after the decree is entered, to apply to the Circuit Court for leave to file a bill of review to the extent of the line of railroad mentioned in the decree from Jacksonville to Chattahoochee and branches."

Mr. Justice Carter dissented from the opinion of the majority of the Court. His opinion concluding as follows: "I am deeply impressed with the importance to the petitioner of the questions sought to be raised by it in the proposed bill of review, but upon the whole record it seems to me that the real grievance of the petitioner is that this Court may have committed an error in its former decision on the facts. If the Court did commit an error, it is now conclusive upon us, unless relief be sought in some manner recognized by the law as appropriate. We are not justified in correcting one error by committing another, however meritorious the claim may be. If I am correct in my conclusions, that the case presented is insufficient to sustain a bill of review, it follows that leave to file one should not be given, because such course would only entail additional delay, trouble and expense upon the parties, and prolong the litigation indefinitely to no useful purpose." This leaves the matter of these back taxes to be further litigated between the railroad and the State. If the Circuit Court below should permit the railroad company to file a bill of review, then I will press the case on behalf of the State with all possible dispatch, that the litigation be not indefinitely prolonged.

Osborne,

vs.

The State of Florida.

This case has been pending in the Supreme Court of the United States for two years past. It involves the validity of the State tax upon express companies. An account of the

case is given in the report of this office for 1895. Hon. John E. Hartridge and myself argued this case in the Supreme Court of the United States on the 8th day of December, 1896, on behalf of the Southern Express Company and the State of Florida respectively. Shortly afterwards a decision was rendered by the Court, and by a unanimous opinion sustained the validity of the State tax.

The State of Florida, *ex rel.* Attorney-General, Plaintiff in Error,

vs.

L. Hilton Green, Defendant in Error.

This was an information in *quo warranto* filed in the Circuit Court of Escambia County against Defendant in Error as District Commissioner of the Provisional Municipality of Pensacola. The case was in effect brought to test the validity of Chapter 4513, Laws of Florida, approved May 27th, 1895, and entitled "An Act to Provide For the Creation of the City of Pensacola, etc., etc."

A demurrer to the information was sustained by the Circuit Court, and the information was quashed. Upon a writ of error to the Supreme Court, the judgment of the Court below was affirmed sustaining the validity of the legislation drawn in question.

W. D. Bloxham, Comptroller,

vs.

The Consumers' Electric Light and Street Railroad Company.

In this case the Comptroller, on the 22d day of December, 1894, issued a warrant directed to the sheriff of Hillsborough county requiring him to collect the taxes assessed against the above named company by a sale of the property of the company. The warrant was levied on the property, and the notice of the sale was duly advertised. The company filed a bill in the Circuit Court asking for an injunction to restrain the sale upon the grounds that the railroad was improperly assessed by the Comptroller, on account of its being a street railroad, and further, that the property after assessment passed out of the hands of the party owning it at the time of the assessment by a judicial sale, and that complainant company had become the owner of the property free from the lien and liability for taxes. To this

bill the State filed a demurrer, which was overruled by the court, and injunction granted. From these orders the State took an appeal to the Supreme Court, and the decrees appealed from were reversed. That court declared that while it was unable to find a judicial definition of the word *railroad* occurring in any taxing statute similar to ours as to whether or not it would include a street railroad, yet, nevertheless, it would give effect to the practical construction of the statute made by one of the executive departments of the government, the uniform practice for twelve years past being that the Comptroller assessed all railroads for taxation, including street railroads. The court further held that the State can choose its own method of collecting its taxes, and that its lien for taxes having attached by the assessment of property cannot be divested by a subsequent judicial sale.

State of Florida *ex rel.* Russell H. Hoadly *et al.*, Relators,

vs.

The Board of Insurance Commissioners of the State of Florida,

Respondent.—Mandamus.

This was a case begun in the Supreme Court by relators, and the question involved may be stated by quoting the language of the court in its opinion: "The business of relators is that of fire and marine insurance, and the question presented is, whether the provision in Section 3, Chapter 4380, Acts of 1895, that 'no insurance company, association, firm or individual, not of this State, nor agent, nor representatives thereof, shall transact any business of insurance in this State, unless such company, association, firm or individual is possessed of at least $150,000.00 in value, invested in United States or State bonds, or other bankable, interest bearing stock issued in the United States, at their market value,'" is, as applied to relators, in conflict with the provision of the Constitution of the United States, that "the citizens of each State shall be entitled to all privileges and immunities of citizens in the several states."

The Court holds said provision in section 3, above mentioned, to be discriminative, and hence void. I quote the conclusion of the opinion of the Court. "As shown by the legislation of this State referred to, both resident and non-resident citizens are authorized to do insurance business in this State, and it is too clear to require any argument that a discrimination has been made as to the conditions upon

which the business shall be conducted. The extent of a discrimination is not important, the only question is, does it exist?

It may be proper to state that we are not dealing in this opinion with the power of the Legislature to exclude entirely, or prescribe the conditions upon which foreign corporations may do business in this State (Paul vs. Virginia, Hooper vs. California, *supra*), nor do we consider the question of the right of the State to exclude entirely her own citizens, or those of other states, from the business of insurance here. Commonwealth vs. Vrooman, 164 Pa. St., 306; 30 Atl. Rep., 217; 25 L. R. A., 250. The State has expressly authorized both classes of citizens to engage in such business here, but has imposed conditions on the one, and none, or if any, clearly discriminative on the other. It is also apparent that Insurance Commissioners revoked the certificate of authority granted to relators solely upon the ground that they had not complied with the requirements of the statute imposing discriminations upon non-resident citizens, and, for the reasons given, we think there is no reasonable doubt about the invalidity of the questioned provision in the statute."

CIRCUIT COURT JUDGES' REPORTS.

I have received from Judges John D. Broome and W. A. Hocker, suggestions as to needed legislation. These I will submit to the proper committees and members of the Legislature for their consideration.

RAILROAD COMMISSION.

It is not my province to advise the passage of a Railroad Commission law. That is a matter of Legislative discretion. But the question is often asked me, if the provisions of our State Constitution are ample to warrant the passage of an efficient commission law. I think they are. The Legislature if it sees fit, can pass a commission law effective enough to prevent discriminations, and to prohibit unreasonable State rates, if such exist.

Respectfully submitted,

WILLIAM B. LAMAR,

Attorney-General.